IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.467 of 2006

Judgment reserved on :25.7.2007

Date of Decision: August 6, 2007

Pawan Kumar … Petitioner

Versus

State of H.P. & ors … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge

Whether approved for reporting?

For the Petitioner	:	Mr.Ajay Sharma, Advocate
For the Respondent	:	Mr. M.S.Chandel, Advocate General with Mr R.M.Bisht, Deputy Advocate General, for respondents 1 to 3. Mr. Ramakant Sharma, Advocate, for respondent No.4.

Deepak Gupta, J.

The petitioner by means of this writ petition has prayed that an appropriate writ, order and direction be issued directing respondents 1 to 3 to evict respondent No.4 from the encroachment made by him on the land bearing khasra No.841, 841/1, 842, 842/2 in khatoni No.541 min, khata No.358 (changed to khata No.52 min and khatoni No. 66 min) measuring 0-04-72

HM situate in Mohal and Mauza Jassur, Tehsil Nurpur, District Kangra at the earliest.

The allegations of the petitioner are that respondent No.4 has encroached upon the land of respondents 1 to 3 mentioned hereinabove by raising khokha/shop thereupon. It is further alleged that though respondents 1 to 3 are purportedly taking action against respondent No.4 but in fact despite orders passed as far back as on 21.2.1997, the respondent No.4 has still not been evicted from the encroached land due to political clout and interference. It is further alleged that the respondent No.4 has been filing one suit after the other and managing to obtain stay orders.

One reply has been filed by respondent No.2, that is, the Superintending Engineer, 9th Circle, HP PWD, Nurpur. According to him, the proceedings have been initiated against respondent No.4 under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 on 1.10.2003 which proceedings are pending before the Collector-cum- Sub Divisional Officer (Civil), Nurpur.

Reply has been filed by respondents 1 to 3 also. According to these respondents, proceedings have been initiated against the respondent No.4 under Section 163 of the H.P. Land Revenue Act. It is apparent that respondents 1 to 3 admit the fact that respondent No.4 has encroached upon the Government land. It is also clear that this land was earlier allotted to respondent No.4 under some order dated 30.10.1989 but vide order dated

21.2.1997 the allotment in favour of respondent No.4 was cancelled.

Respondent No.4 in his reply has submitted that the land in question has been sanctioned in his favour vide order dated 30.10.1989 in Missal No. 241/89/SO and, therefore, he is not an encroacher upon the Government land.

When the matter came up before us for hearing on 5.4.2007, we noticed that respondent No.4 has relied upon the order dated 30.10.1989 and we noted that the said order has been set aside by Shri K.C. Sharma, Settlement Officer, Kangra on 21.2.1997, we, therefore, passed the following order :-

> " Respondent No.4 in his reply has relied upon an Order dated 30th October, 1989, whereby according to him, the land was ordered to be regularized in his favour, on payment of ***Nazrana.*** We have perused the reply filed on behalf of respondents No.1 to 3. Along with the reply respondents No.1 to 3 have placed on record a copy of the order passed by Sh. K C Verma, IAS, Settlement Collector, Kangra at Dharamshala, in which he has clearly set aside the order dated 30th October, 1989 and ordered that *Khata* be recorded in the name of the State of Himachal Pradesh. If this be true, the affidavit filed by respondent No.4 is absolutely false.
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> Before taking any action, respondent No.4 is directed to file fresh affidavit, within a period of four weeks from today, explaining why he did not mention about the later developments. Along with the affidavit, respondent No.4 shall also file, a copy of the plaint of the Civil Suit titled as *Prem Sagar vs The State of H P*, filed before the Sub Judge Ist Class,

Nurpur, which was withdrawn on 4.2.2003 with permission to file fresh suit on the same cause of action.

The Registry is directed to send for the records of the case, as aforesaid.

List the matter on 11th May, 2007. Copy ***Dasti*** on usual charges."

Respondent No.4 has filed an affidavit in response to our order. According to him, he had handed over all the documents including the copy of the order to his counsel Shri O.P. Sharma. He has, however, not clearly stated that the copy of the order dated 21.2.1997 was handed over to his counsel. He has placed on record the copy of the plaint in Civil Suit No.264/97. Heading of this shows that in this Civil Suit, the respondent No.4 had prayed that the order passed by the Settlement Officer on 21.2.1997 is null and void and is not binding upon the plaintiff and, therefore, consequential decree be passed against the respondents restraining them from interfering in the aforesaid land.

This suit was filed in the year 1997 and continued till 24.2.2003 when it was permitted to be withdrawn with permission to file a fresh suit. Fresh suit in this regard was filed on 16.2.2005. In this suit also one of the prayers made is that the order dated 21.2.1997 passed by the Settlement Officer, Kangra be cancelled as illegal, arbitrary and without jurisdiction. In this fresh suit, some stay was initially obtained by the respondent No.4 but thereafter the stay order was vacated and thereafter the respondent No.4 filed an appeal before the Additional District Judge,(I), Kangra at

Dharamsala, titled *Prem Sagar v. State of H.P,* which is still pending.

It is apparent that respondent No.4 has withheld material facts from this Court. In the reply filed by him, initially he did not make any mention of the order dated 21.2.1997 and relied upon the order dated 30.10.1989 which had already been set aside. He did not make any mention about the two suits filed by him. It is apparent that respondent No.4 was trying to mislead this Court. We are unable to accept the explanation of respondent No.4 that he had handed over the documents to his counsel. The respondent No.4 has signed the reply as well as the affidavit and cannot be permitted to resile from the same.

From the facts mentioned above, it clearly emerges that the respondent No.4 is not the owner of the property. The order by which the land was granted has been set aside as far back as on 21.2.1997. Though more than ten years have elapsed, the State has not been able to recover the possession of its property. It is apparent that respondent No.4 only relies upon the order dated 30.10.1989 and cannot even claim adverse possession of the suit land. After the order was passed on 21.2.1997, he obtained stay order and the stay continued till 2003. In 2003, the said suit was withdrawn and fresh suit was filed after more than two years in 2005.

Under Article 100 of the Limitation Act, the limitation for setting aside an order is one year. Even assuming that the time spent in the previous suit could have been excluded, the second suit filed on 16.2.2005 could not be said to be within limitation in

so far as it related to the setting aside of the order dated 21.2.1997. Furthermore, no civil court can stay proceedings under Section 163 of the H.P. Land Revenue Act or the proceedings initiated under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act.

Keeping in view the entire facts and circumstances of the case, we direct that the proceedings under H.P. Public Premises and Land (Eviction and Rent Recovery) Act, as well as H.P. Land Revenue Act, initiated by respondents 1 to 3 against respondent No.4 shall be taken to their logical conclusion on or before 30.11.2007. If necessary, day to day hearing shall be conducted and the matter shall not be adjourned. We further direct that the appeal, if any, filed by any party shall be disposed of within four months from the date of its filing.

We have clearly come to the conclusion that the respondent No.4 has withheld material facts from this Court and has sworn a false affidavit. We, therefore, allow the writ petition and direct that respondents 1 to 3 shall ensure that the proceedings against the respondent No.4 taken out under the provisions of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, and the H.P. Land Revenue Act shall be completed by 30.11.2007. Respondent No.4 is burdened with exemplary costs of Rs.20,000/- for having made blatantly false averments in the reply to the writ petition. These costs shall be paid by the respondent No.4 to the State of H.P. within a period of six weeks from today. In case the costs are not paid within the stipulated period, the defence of the respondent No.4 in the

proceedings under the H.P. Land Revenue Act and the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, shall be struck off. The learned Additional District Judge (I) Kangra at Dharamsala is also directed to dispose of the appeal being CMA No. 17 N of 2006 filed by the appellant/respondent No.4 on or before 30.9.2007 and the learned trial Court shall dispose of the Civil Suit No. 14 of 2005 latest by 31.3.2008. The registry shall ensure that a copy of this judgment is sent to the Additional District Judge (I), Kangra at Dharamsala and the Civil Judge (Jr. Div) (I) Nurpur District Kangra at the earliest.

The writ petition is disposed of in the aforesaid terms.

(Deepak Gupta), J

August 6, 2007. (V.K.Ahuja), J.

s.